

MINUTES

SALINA BOARD OF ZONING APPEALS

City Commission Room 107

Thursday, January 18, 2007

MEMBERS Lange, Morse, Sanborn, Schmitt, Wilson and Worth
PRESENT:

MEMBERS Funk
ABSENT:

STAFF
PRESENT: Andrew, Asche, Burger and Herrs

Item #1. Approval of the minutes of the regular meeting of October 19, 2006.

The minutes of the regular meeting held on October 19, 2006 were approved as presented.

Item #2. Approval of the minutes of the regular meeting of December 21, 2006.

The minutes of the regular meeting held on December 21, 2006 were approved as presented.

Item #3. Application #V06-16, filed by Tammy Toothman / Michael Erickson, requesting a side yard setback variance of 4.5 ft. from 7.5 ft., (the minimum side yard setback for a lot in an R-2 (Multi-Family Residential) zoning district) to 3 ft. to allow the construction of a 12 ft. by 24 ft. house addition to match the existing side yard setback of the house. The subject property is legally described as Lots 6 & 8 in Block 12 of the Episcopal Military Institute to the City of Salina, Saline County, Kansas and addressed as 1007 N. 7th Street.

Mr. Andrew presented the staff report, including visual presentation of photographs and site plan details, which are contained in the case file.

Mr. Wilson asked do any board members have any questions for the staff? Ok, since there are no questions, would the applicant approach the podium and state your name and address and explain your application please.

Tammy Toothman, 1007 N. 7th Street, owner of the house, stated the reason why I want to get the application approved is because my back porch which is 7 ft. x 12 ft. is deteriorating. The floor is rotting and I have pictures with blocks placed on the concrete pillars there. The door is shifting to where we can't get it to close right and open right. My kitchen that I have with the little window that is there is 7 ft. x 11 ft. with a refrigerator, a stove and two counters, that's all I have. I would like to tear that back porch off and extend the kitchen to the west to make it more sufficient to me. For me, my other occupant and my dogs it's just crowded. My washer and dryer are downstairs and I would like to bring them upstairs. Back in September I was off of work for a sprained hip so it was hard for me to go up and down the stairs to do laundry. I have been working on the house, I inherited the house from my mother, and I've been trying to work on it and fix it up. And I think with doing that little bit would improve the appearance. I would get new siding, I don't think they even carry that siding anymore. I would put a gutter up, I could put new siding up. I could get central air. I could do a lot of things with this addition if it was approved.

Mr. Wilson stated thank you. Do any board members have any questions of the applicant? Ok, you may sit down.

Ms. Toothman stated thanks.

Mr. Wilson asked are there any comments from citizens, anyone supporting? Yes sir, would you approach the podium and state your name and address.

Allen Becker, 1011 N. 7th Street.

Mr. Wilson asked what are your comments?

Mr. Becker stated I don't know on the survey if they could take a tape measure. My fence is 6 inches in on my property. We had it done when it was surveyed because if we left it within an inch or two of the property line we would have went through a gas meter. And if you put a tape measure right there it's 36 inches from my fence to the front porch of their house. If you go to the back corner of her house it's 27 inches from my fence to the corner of her house. And the picture doesn't show it real well, but from about two-thirds of the way back on, the eaves of her house hang over my fence which is still maintained in an approximate 6 inch margin. And, like how are we going to maintain and construct this without it going over my fence is my point. Her yard is chain linked in and it's locked. I've been through the maintenance part of it before. They had it roofed and no one said anything to me and the next thing I knew I had shingles and tar paper and roofers jumping my fence and I ended up cleaning up what was left. That lot here, this 40 ft. lot that my shed is on, was originally owned by her grandparents or whoever and it was sold to the people who own my house

and that's where we're getting the low setback. I don't know when it was done. That 40 ft. lot is listed separately from my other two 40 ft. lots. And whenever that was done was when the booboo happened. I had my yard surveyed to put my chain link up. I figured I pay taxes and I should be able to chain link anything I pay taxes on. And Tammy came out and didn't like where she saw the pins. At that time I offered to sell her some ground up to 5 ft. She did not want to do that. I don't think I'm asking too much. There's not even the 3 ft. there for the variance. And, I'm not saying her house is crooked. They came out and looked and they agreed that my fence runs pretty true with the pins. So I can deal with the way it is now but I don't see how we can go ahead and add on and I have to put up with more. Because it's going to be closer to my fence and my property line.

Mr. Wilson asked are there any questions of Mr. Becker from any board members?

Mr. Morse asked did you indicate that the house next door is not perpendicular to the property line?

Mr. Becker stated I can't say that it is or it isn't. But, I had mine surveyed and it's the same two pins that they had redone. I've had my tape measure out and I measured and I'm within an inch of running true to those pins. That tree in the back, you can't see the west pin. I found my two north pins, that tree right there, I found my two north pins and strung it off and Mr. Burger was out there and we measured and there's a pin on the other side of that tree before I bought the place and it's within an inch or two and I still maintain that it's within 6 ½ inches of that fence there and it's about 6 inches on the other end. Her fence is about 6 inches to the south of that pin. So I'd say that fence is pretty straight. There is the deal brought up that my fence is crooked. I can't see where it's crooked, but as her house progresses it progresses where it gets over on my yard. I don't care what they build. I'm not saying that they can't build anything. I'm just saying that I just prefer that it not be over my property line.

Mr. Wilson asked are you saying that there was one survey taken or two?

Mr. Becker stated I had mine surveyed in 1995 with my pins and then they had their survey done.

Mr. Wilson asked recently?

Mr. Becker stated recently.

Mr. Andrew stated John do you want to share what you found. Maybe I missed understanding a little bit the survey that we had in the packet. What is our conclusion that there's 3 ft. based on?

Mr. Burger stated on this particular application I visited the property on two occasions to verify where the actual pins were because Ms. Toothman had a survey done prior to submittal of this application. And what we did conclude was there was a 3 ft. area between the house and the north property line, although there is an existing wood fence that goes from the rear of the house in the general direction of this large tree that's on the northwest corner of the property. And looking at Mr. Becker's survey, I'll recall it up here, he has a storage building with 3 ft. of side yard. In front of those pins we determined that these are square and the pins are located where they were. He had roughly 6 inches of gap between his fence and that north property line. But, in finding those pins, we also determined that what was visually confusing was this fence was narrowing as it went back to the rear of the lot. And although it isn't square with the house it kind of leads to the appearance that the distance is closing between the house and the north property line. I can find nothing that proves that the house is not perpendicular to the street and to the lot. That's indicated also on the survey. It's square to the lot. I'm assuming that there's a 3 ft. area continuous to the front of the house back to here. But, the 6 ft. wood fence closes in that distance and makes it a bit confusing as you go back to the rear of the lot. The pins that we're talking about are roughly around either side of this big tree. And, what I've indicated here is the fact that the pin kind of closes in the distance before it reaches the tree and that's led to some confusion to where the property line is in regards to the house.

Mr. Wilson asked so Mr. Burger what you're saying is that there is 3 ft. between the property line and the house all the way back? Because I think what Mr. Becker was saying was that when you went farther west it got to be about 27 inches from the property line and the house.

Mr. Becker stated my fence and the house, which maintains a 6 inch margin, so you're down to 21 inches.

Mr. Burger stated there is nothing that I could determine at the site that showed that the house is non-perpendicular to the street and the lot. If that were the case then this wouldn't show the pins to be at right angles on this particular survey. And looking at Mr. Becker's survey those pins are all 90°, so we're looking at roughly the same pins for either property and the houses and the majority of the properties are perpendicular to the street and the lot without tapering or closing the distance to the property, that is what I assumed in the measurements there. But there are pin locations other than here. There is one on the inside of the tree and that lines up with the 4 ft. chain link fence on the north end of the property line. The remainder of that area is open and doesn't appear to close.

Mr. Wilson stated I know it's unfortunate that the edge of the roof leads to water coming off of that falls directly on to your property and your chain link fence. That's kind of unfortunate. You can see where the edge of the

roof and rain coming off would fall just about directly on your property line and the chain link fence.

Mr. Schmitt stated the staff recommendation was for her to put on a drainspout.

Mr. Wilson stated yeah, it would have to be. I would imagine.

Mr. Becker asked but how are you going to do that without getting on my property?

Mr. Wilson stated I'm not sure. Is your main complaint that if any work was done that they would come on to your property?

Mr. Becker stated I pay taxes on ground. I should not have somebody else's building on the ground that I pay taxes on.

Mr. Wilson stated yeah, that's true. If they built the addition it would kind of bother you that it's so close to your property.

Mr. Becker asked well how can you build an addition if you have less than 2 ft. to work with?

Mr. Wilson stated yeah it's supposed to be larger.

Mr. Becker stated even 3 ft.

Mr. Burger stated this is a bungalow craftsman home generally constructed with large overhangs and exposed rafters. So the runoff from the roof didn't need a gutter and downspout at the time. You can zoom in on this particular photograph. The eve is roughly over the chain link fence or slightly to the inside of that.

Mr. Wilson stated let me say Mr. Becker, on this addition if they were to move it even 1 ft. in that would give you more space between the addition and your property. Of course they don't want to offset it too much.

Mr. Becker stated I can understand that but I think I have a few rights to not have somebody's house over on my property more than I have to.

Mr. Wilson stated say if they put pushed it back towards the south even 1 ft. then that would certainly give them 3 ft. from the property line. I don't know if that's practical, but I'm trying to find a way we can please both parties here.

Mr. Lange stated it certainly would take away from the improvements that you've made to the house.

Mr. Wilson stated yes, it wouldn't look as good.

Mr. Sanborn asked is the option still available for purchasing some of that property at a reasonable price at a market value?

Mr. Becker stated I have my storage shed back there with the 3 ft. setback. That pretty well fixed that.

Mr. Worth stated I think we're getting into something that's a matter of law maybe and what rights they have. There might be that they could work out an agreement and have it recorded that would give them the right to come onto your property and make repairs to their house. I'm not saying they should do that or not. I don't know what property rights they have or don't have but maybe a lawyer could determine that. That's just guess work.

Mr. Becker stated I said I offered to sell this earlier and she wasn't very receptive to it. I wouldn't have minded before if the roofers would have showed up and somebody would have let me know. At the time I had a dog running in my yard and suppose if the roofers got bit then it would have been my butt.

Mr. Wilson asked so you'd be willing to sell her enough property so they would have a 7.5 ft. setback, which a modern house requires a 7.5 ft setback?

Mr. Becker stated my shed is there. What can we do about that?

Mr. Wilson asked didn't you offer to sell some?

Mr. Becker stated I did before I put my shed up back there in 1995. I offered to sell her up to 5 ft.

Mr. Wilson asked oh, not recently?

Mr. Becker stated no.

Mr. Wilson stated oh I thought recently.

Mr. Becker stated that when she saw where the pins were she didn't like it in 1995 before I put my fence up.

Mr. Worth stated if you could work out an agreement on money it could be possible to solve the problem.

Mr. Becker stated I'm not after money. I just don't think that somebody should be able to build something that sticks over on to someone else's property.

Mr. Worth stated I can see that.

Mr. Andrew stated you as a board don't have the authority to do that. I think what we may need to do, it may require some more consultation with Landmark Surveyors. If our measurements are telling you there is 3 ft. it is based on the assumption that the fence is on the property line.

Mr. Wilson stated the chain link fence.

Mr. Andrew stated the chain link fence. And if it is not, then we have not given you accurate information as far as what that setback actually is. The appropriate thing might be to postpone consideration of the setback variance until you can get a completely accurate measurement. It is our job to tell you what you're being asked and the amount you're being asked to vary. If that is uncertain then we're going to have to get some help. It does not look to me like that overhang of the house is over 3 ft. in width. But, if our 3 ft. that we're giving you is to the fence and the fence is in fact not on the property line, then if the distance to the fence is 3 ft. and the fence is 6 inches into the property then the setback is not 36 inches it is 30 inches. And that's an important fact for you to have.

Mr. Wilson stated and then so if we did that then Mr. Becker would you still think they should have a 7.5 ft. setback for the addition?

Mr. Becker stated whatever is convenient so that it can be constructed and maintained without hanging on my fence.

Mr. Andrew stated there is a way you can when you do a sell off of property, we've seen a few in our time where it's got a jog in it, where you sell a portion adjacent to the house and you keep it where it is adjacent to the rear storage building. But, you'd have to figure out, I think the most important thing is to tell you what is actually there and then we can figure out what more might or might not be needed. But if we can't tell you with a certainty what the distance is from the side of the house to the actual property line then you'd be voting on something without good facts.

Mr. Wilson asked wasn't there a survey recently Mr. Andrew?

Mr. Andrew stated yes there was, but the problem with the survey that I'm seeing is that it is not what we would usually get for new construction in that what you would usually ask for is a survey that shows you where all the property lines and pins are, but this shows none of the improvements and that is not very helpful.

Mr. Wilson stated oh, ok.

Mr. Andrew stated and usually my experience with Landmark Surveying is that if there is some encroachment and there is something where they have identified that a fence, which is supposed to be on one person's property but actually extends over to another's property at one point, they identify that on their survey. But, what they need to do is have a surveyor tell us what the distance is from that common property line to the side wall of the house. And the way you do that is have the surveyor locate the improvements. But, if you could go back to the survey for 1011 N. 7th John. This is a survey that has improvements on it, but the actual survey document prepared for 1007 doesn't have any improvements on it. And so I'm not sure that we can sit here and tell you whether you're being asked to approve a variance to get a 3 foot setback or something less than that.

Mr. Sanborn asked am I correct that the other option that we're trying to get this information on the accuracy on the survey is if the two owners of the properties could work out an arrangement where they could possibly set a purchase where they could have the 7.5 ft. clearance, but yet it only extends to the back of the house and that would still allow you to keep your shed where it's at. At that point you wouldn't be left with a need for a variance.

Mr. Andrew stated that's an option or we could end up with a lesser setback than 7.5 feet. If a 5 ft. setback is adequate to allow workmen to go in there and do their work and have room then maybe we're there. That is a private party issue. Our issue is to get you accurate information as to what that setback actually is.

Mr. Wilson asked could you do that within a month?

Mr. Andrew stated yes.

Mr. Wilson asked so we'd take that back to the next meeting? Would the City pay for that survey or would the property owners have to pay?

Mr. Andrew stated we would sit down with Landmark and explain this. The owner's already paid for the survey. What we're going to discuss with Landmark is information that we think they should have identified on the survey to make it useful to the owners. We'll probably just have a visit with Landmark directly and say, we need you to give us this information to make it more useful.

Mr. Wilson stated ok.

Mr. Morse stated I would like to make a suggestion just off the top of my head with Mrs. Toothman, you might also contemplate what you have to give up or move or change if you only build a 12 ft. x 22 ft. addition back

there. What would that do to the whole range of what you would put in there?

Ms. Toothman stated right now I have a faucet on the very northwest corner coming out of the wall. I would have to take a look at my plans and I would have to redo my plans and everything.

Mr. Morse stated it would be something else to look at if we get into a push and a shove. There may not be any other option.

Mr. Wilson stated this is really a tricky problem.

MOTION: Mr. Sanborn stated Mr. Chairman I make a motion that we table consideration of this request to the next scheduled meeting to give time for the City to verify the correctness of the land survey.

Mr. Wilson stated and specifically the distance from the property line to the wall of the house. That was the question.

Mr. Sanborn stated that can be added yes.

Mr. Wilson stated that's the most important piece of information from our perspective. Ok, is there any second for that?

SECOND: Mr. Lange.

Mr. Wilson stated ok. I wanted to ask Mr. Becker and Mrs. Toothman, would that be satisfactory to you that we just delay this for a month and get more information and then we'll have to come back and think about it. Is that ok with you?

Mr. Becker stated it's fine with me.

Ms. Toothman stated yes.

Mr. Andrew stated that would be the third Thursday of February that we would postpone that to.

Mr. Wilson stated before we vote on this, was there anybody else who had any comments, pro or con? No, ok, so that's all the comments. It's been moved and seconded. All in favor say "aye", all opposed say "no".

VOTE: Motion to postpone carried 6-0.

Item #4. Presentation of 2006 Annual Report.

Mr. Andrew stated thank you Mr. Chairman. The purpose of the annual report is the City Commission wants all its appointed boards and

commissions to report back to them with their activities for the previous year and also to get a report on how frequently the board met and what the attendance was for the appointed members. So, we have provided a report to you that shows of the 12 months in 2006 that we met 7 of those 12 months and during that time you considered 12 variance requests that came before you. We had 10 of those that were approved, one of those was denied and one on East Magnolia Road was withdrawn by the applicant to pursue other options. The other three that were filed were minor variances that were approved administratively by staff. I think what I'd ask you to do is look at our recording of your attendance for 2006, based on when Mr. Lange was appointed he didn't take his seat until January 23, 2006, so there were only 6 meetings that he could have attended in 2006. For the rest of the board that reflects attendance based on 7 meetings. So, we ask you to look at that and see if that squares with your recollection and also to look at the contact information we have for you on Exhibit B, if any of that is out of date you could let us know about that as well. If the information there appears to be accurate and the annual report reflects your recollection of your activities and your attendance then we will forward this on to our City Commission as your report for 2006.

Mr. Wilson asked do we need to vote on this?

Mr. Andrew stated it doesn't necessarily need a formal vote if there are really no items that need to be changed and the board concurs that there are no changes that need to be made then we would send the report on either with a formal motion or informally.

Mr. Wilson asked are there any board comments on that?

Mr. Sanborn stated on paragraph two it says during the year of 2005, shouldn't that be 2006?

Mr. Andrew stated that should be corrected to read 2006, yes. We would certainly want to do that before we send it on.

Mr. Wilson asked any more comments on the annual report? I don't think we need a formal vote. Thank you staff for preparing this very nice report. Sometimes it's nice to look back and say I remember that one, have a summary of the applications.

Item #5. Election of Officers.

MOTION: Mr. Morse stated I nominate Don Schmitt for Chairman.

SECOND: Mr. Worth
Nominations ceased.

Salina Board of Zoning Appeals

December 21, 2006

Page 11

VOTE: Motion carried 6-0.

MOTION: Mr. Morse stated I nominate Mr. Worth for Vice-Chairman.

SECOND: Mr. Schmitt.

Nominations ceased.

VOTE: Motion carried 6-0.

Don Schmitt and Dick Worth were elected Chairman and Vice-Chairman respectively.

Item #6. Other Matters.

There were no additional matter to come before the Board.

Meeting adjourned at 4:45 p.m.

Dean Andrew, Secretary

ATTEST